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2011 IL App (3d) 110437-U

Order filed September 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> K.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0437
)	Circuit No. 08-JA-179
v.)	
)	
Kara A.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The trial court found respondent, Kara A., to be an unfit parent. At the best interest hearing, the trial court determined that it was in the best interest of the minor, K.H., to terminate

respondent's parental rights. On appeal, the respondent argues that the trial court erred when it found that it was in the minor's best interest to terminate the respondent's parental rights.

¶ 3

FACTS

¶ 4 K.H. is the son of respondent, who was approximately 20 months old at the time these proceedings began. On August 22, 2009, the State filed a juvenile petition, alleging that K.H. was neglected. Specifically, the petition alleged, in part, that K.H. was neglected because: (1) he tested positive at birth for cocaine; and (2) his environment was injurious to his welfare, because respondent continued to use cocaine and was terminated from drug treatment. Respondent admitted to these allegations. At the subsequent adjudicatory and dispositional hearing, K.H. was found to be neglected, respondent was found dispositionally unfit, and K.H. was made a ward of the court. Respondent was ordered to perform two random urine tests monthly, visit K.H., secure employment and adequate housing, obtain a drug evaluation, and successfully complete treatment.

¶ 5 After periodic permanency review hearings, the trial court found that respondent remained unfit, and the State filed a petition for termination of parental rights on December 15, 2010. The petition alleged that respondent was an unfit parent in that she failed to make reasonable progress toward the return of K.H. during the nine-month period of March 1 through December 1, 2010. 750 ILCS 50/1(D)(m)(iii) (West 2010).

¶ 6 Respondent's fitness hearing took place on April 14, 2011. At the hearing, the State called a police officer who testified that he arrested respondent on November 9, 2010, for criminal damage to property when she broke the window to a car. The State also called Shannon Doubet, a foster care caseworker, who testified that she referred respondent for a substance

evaluation, but respondent failed to keep her appointment in June 2010 because of an outstanding arrest warrant. In addition, respondent was required to do two drug tests a month, but the caseworker only received one drug test from respondent, which tested positive for cannabis. Furthermore, respondent's housing arrangements were sporadic, and she did not always advise the caseworker of where she was living. Respondent also expressed concern about being homeless at some point in early May 2010.

¶ 7 Martha Delzell, who supervised respondent's visits with K.H., testified that between March and November 2010 respondent was scheduled for one visit a week, but only attended about half. However, the visits respondent did attend went well, and a bond had developed between respondent and K.H.

¶ 8 Respondent testified and admitted testing positive for marijuana and being incarcerated twice during the applicable nine-month period. Respondent stated that she was in inpatient substance abuse treatment from January to February 2011, and started intensive outpatient treatment in March 2011. Respondent also stated she had enrolled in a General Educational Development program, which was to have begun May 2, 2011. Respondent had a full-time job prior to March 1, 2010, but was terminated after her arrest for an outstanding warrant in July 2010. After all the evidence was presented, the trial court ultimately found by clear and convincing evidence that respondent did not make reasonable progress toward the return of K.H. during the applicable nine-month period.

¶ 9 The matter proceeded to a best interest hearing on May 19, 2011. In preparation for the hearing, Doubet filed a best interest report. The report stated that K.H. had been placed in foster care with his paternal grandmother since July 2009, when K.H. was about 20 months old.

However, K.H. lived with his grandmother prior to July 2009 when both his parents, and later only his father, resided there. The report further stated that the foster mother was willing and able to provide K.H. with a permanent and stable home through subsidized guardianship.

Although K.H. referred to his biological parents as "mommy" and "daddy" and his foster mother as "grandma," the report indicated the foster mother had a strong relationship with K.H. and provided him with food, shelter, medical care, clothing, and education. K.H. enjoyed his visits with respondent, but when her visits were sporadic, K.H. tended to act out. These tantrums were less frequent when K.H.'s visits with respondent were suspended. In addition, the report also indicated that respondent tested positive for marijuana on March 9, March 29, and April 5, 2011. Respondent also tested positive for marijuana and ecstasy on March 23, 2011.

¶ 10 At the hearing, respondent admitted to testing positive for drugs. Despite this, respondent asserted that she was turning her life around because she had been living at the Dream Center in Peoria for about three weeks, with mandatory classes to attend. She was also still enrolled in intensive outpatient treatment with group therapy and relapse prevention since March 9, 2011. However, respondent admitted it was her fourth or fifth time in inpatient and outpatient treatment.

¶ 11 Respondent testified that she gained employment the week of the hearing at National Publications where she worked 30 hours per week. She further testified that she visited K.H. regularly, called him three times a week, and had established a very good relationship with him.

¶ 12 After reviewing all the evidence and arguments, the trial court found that it was in K.H.'s best interest to terminate respondent's parental rights. Respondent appeals.

¶ 14 On appeal, respondent argues that the trial court's finding that it was in the best interest of the minor to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 15 The respondent argues on appeal that the trial court erred in holding that it was in K.H.'s best interest to terminate her parental rights. On review, we will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005). A finding is against the manifest weight of the evidence where a review of the record demonstrates that the opposite conclusion is clearly evident. *In re B.B.*, 386 Ill. App. 3d 686 (2008).

¶ 16 At the best interest hearing, all considerations must yield to the best interest of the minor. *In re G.L.*, 329 Ill. App. 3d 18 (2002). It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347 (2004). The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 17 In this case, K.H. is almost four years old, and has been placed in the care of his paternal grandmother since he was 20 months old. Prior to foster care, K.H. lived with his grandmother

while his parents resided there. Despite K.H. living with his grandmother most of his life, respondent asserts that she still has a bond with K.H. Respondent also asserts that she has made dramatic changes in her life and is on her way to rehabilitation. Despite these assertions, at the best interest hearing, a parent's interest in maintaining a parent-child relationship must yield to the child's interest in a stable home life. *In re I.B.*, 397 Ill. App. 3d 335 (2009). Moreover, respondent's arguments incorrectly focus on her progress instead of the best interest of K.H. See *G.L.*, 329 Ill. App. 3d 18.

¶ 18 In the present case, we find that the court correctly determined the best interest of K.H. favored terminating respondent's parental rights. K.H.'s foster care with his grandmother provides him with all his needs, along with a sense of stability and permanency. His grandmother is very involved with his school, and is ensuring K.H. is meeting his developmental milestones. Throughout his foster care, K.H. and his grandmother have developed a strong and stable relationship. Furthermore, his grandmother is willing to provide guardianship.

¶ 19 Moreover, the existence of a bond between respondent and K.H. "does not automatically insure that the parent will be fit or that the child's best interests will be served by that parent." *In re J.B.*, 198 Ill. App. 3d 495, 499 (1990). The evidence shows that respondent and K.H. have a good relationship during visitation, but respondent's sporadic visitations with K.H. during the applicable nine-month period negatively affected K.H.'s behavior. Respondent also had a history of drug abuse and criminal activity, which shows she will be unable to provide a safe and secure environment for K.H. Accordingly, we hold that the trial court's finding that terminating respondent's parental rights was in the minor's best interest was not against the manifest weight of the evidence.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

¶ 22 Affirmed.